



United States Department of the Interior

NATIONAL PARK SERVICE
1849 C Street, N.W.
Washington, D.C. 20240



August 27, 2014

Re: **New York Life Building, 37-43 S. LaSalle Street, Chicago, Illinois**
Project Number: **29971**

Dear

I have concluded my review of your appeal of the decision of Technical Preservation Services (TPS), National Park Service, denying certification of the rehabilitation of the property cited above. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for federal income tax incentives for historic preservation as specified in the Internal Revenue Code. I thank you, _____ for meeting with me in Washington on July 14, 2014, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the materials census and floor plans submitted at my request by _____ with his letter dated July 17, 2014, and by _____ with his letter dated July 28, 2014, I have determined that the proposed rehabilitation of the New York Life Building is not consistent with the historic character of the property and the historic district in which it is located, and that the project does not meet Standards 2, 4, and 5, of the Secretary of the Interior's Standards for Rehabilitation (the Standards). Therefore, the denial issued on June 26, 2014, by TPS is hereby affirmed.

The New York Life Building is located in the West Loop-LaSalle Street Historic District, and was certified as contributing to the significance of the district on February 10, 2014. Built in 1894, to designs by the noted Chicago architect William Le Baron Jenney, the building was very soon greatly enlarged in several building campaigns ending about 1903. Extensive interior modifications began in 1938 and ended in the early 1940s. The corridors in question here date from this period. Another "modernization" project took place in the 1990s.

TPS found that the proposed rehabilitation of this “certified historic structure” did not to meet the Standards owing to the planned “demolition of portions of the second-floor corridor, demolition of all elevator lobbies and corridors on the floors above the second floor, and changes to upper-floor stairs and other historic features and materials.”

I agree with this assessment. In the New York Life Building, as in nearly every other historic office building, the upper-floor corridors are character-defining features. The changes proposed here would remove all interior partitions above the fourth floor, including those defining the existing corridors. The only historic materials to be retained would be the corridor wall segment with the elevator doors between column line 4.5 and column line 9. In addition, an existing historic stairway at the east end of the elevator lobbies would be walled off on each floor. Together, this extensive loss—and visual loss—of historic fabric puts the project well outside the bounds of change contemplated by the Standards.

The additional information supplied by _____ confirms that there is a substantial degree of integrity remaining in the configuration of the historic corridors, generally between column line 4 and column line 13 (the fifth, twelfth, and fifteenth floors being the exceptions), and that those remaining historic corridors retain their historic materials. Consequently, I find that the impact of the proposed changes to the historic corridors is more detrimental to the overall historic character of the property than was apparent from the original Part 2 application.

In his letter, _____ proposed salvaging and reinstalling historic materials on the new wall opposite the elevator doors on floors four through twelve, creating an elevator lobby visually similar to the demolished historic configuration. The drawings accompanying _____ letter show that this new wall will be unbroken along its length except for a single new door and surround (albeit matching the historic surrounds being removed), where currently there are multiple doors with their historic trim. Although this proposed modification to the project is an improvement, it is not sufficient to overcome the overall loss of historic character caused by the project as originally submitted.

Consequently, I find that the overall impact of the project, as now modified, on the historic character of the New York Life Building conflicts with Standards 2 and 5. Standard 2 states: “*The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.*” Standard 5 states: “*Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a historic property shall be preserved.*” Further, although the materials to be removed are not original, they are seventy-five years old, and thus date from well within the documented period of significance of the West Loop-LaSalle Street Historic District (1873-1962). Consequently, their proposed demolition also causes the project to contravene Standard 4. Standard 4 states: “*Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.*”

Two other factors raised in our meeting concerned the length of time that the Illinois Historic Preservation Agency (IHPA) retained the application before forwarding it to the National Park Service, and the certifications issued to other rehabilitations deemed by you to be comparable to that reviewed here.

With regard to the first of these, in the file there is an undated, twenty-one page, Part 2 application stapled to _____ transmittal letter to the IHPA of January 22, 2014. However, there is a second undated, twenty-three page, Part 2 application in the TPS file, apparently submitted at IHPA’s request, date stamped as having been received by the IHPA on April 25, 2014. Copies of emails in the file confirm

there were back-and-forth communications with IHPA following the submittal of both applications until ultimately requested by email that the IHPA forward the application to TPS on May 29, 2014. TPS received the application file from the IHPA on June 11, 2014. The Part 2 application fee was paid on June 20, 2014, and TPS reviewed the project and issued the denial decision in just six days, on June 26, 2014.

Although it appears that the project was under review by the IHPA for a longer than expected time for a complete application, delays in reviewing applications can occur. I have spoken to the IHPA and was told that there were periods during their review when they had requested, but were waiting for, additional information. Indeed, the IHPA review comments on the April Part 2 application, dated June 10, 2014, include nineteen conditions, an indication of a lack of adequate detail in the Part 2 application. Moreover, the regulations state: *"Generally reviews of certification requests are concluded within 60 days of receipt of a complete, adequately documented application, as defined § 67.4 and § 67.6 (30 days at the State level and 30 days at the Federal level).... The time periods in this part are based on the receipt of a complete application; they will be adhered to as closely as possible and are defined as calendar days. They are not, however, considered to be mandatory, and the failure to complete review within the designated periods does not waive or alter any certification requirement."* [36 CFR 67.3(b)(4)].

Additionally, the regulations provide a remedy for applicants who are experiencing unusual delays in SHPO application reviews. The regulations state: *"It is the owner's responsibility to notify the Secretary if application reviews are not completed within the time periods specified above. The Secretary in turn will consult with the appropriate office to ensure that the review is completed in as timely manner as possible in the circumstances."* [36 CFR 67.3(b)(6)]. I see nothing in the file that such a notification was made, although TPS was copied on May 29, 2014 email to the IHPA, and wrote to TPS on June 2, 2014, noting that he had asked IHPA to forward the application, and submitting a copy of the application package and correspondence. TPS responded to on June 18, 2014, citing the regulation quoted above, and noting that applications must be submitted first to the SHPO and cannot be sent directly to the National Park Service. The regulations state: *"Requests for certifications, preliminary determinations, and approvals of proposed rehabilitation projects shall be sent to the SHPO in participating States."* [36 CFR 67.3(b)(3)]. Illinois is a participating state.

With regard to comparisons to other rehabilitation projects, I note that the has successfully completed other similar projects utilizing the investment tax credits, including in Chicago and here in Washington, DC. With regard to the specific comparisons presented at our meeting, the regulations state: *"Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects."* [36 CFR 67.6(a)(1)].

Finally, as noted during our meeting, the application review conducted by TPS and the TPS denial decision dealt only with the upper floor corridors. Due to the imminence of the project construction start, and partly as a service to you, TPS limited its review to this single—but paramount—issue. Accordingly, our discussion and my review were also limited to this one issue. And, my affirmation of the TPS denial of certification applies solely to this issue.

Consequently, should you wish to continue seeking approval of the overall project, you must not only modify the project to meet the objections cited here, but must also obtain approval of the entire rehabilitation of the New York Life Building. Any further discussions must be directed to TPS. Also,

please note that the regulations caution: *"Owners are strongly encouraged to submit part 2 of the application prior to undertaking any rehabilitation work. Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at their own risk."* [36 CFR § 67.6(a)(1)].

As Department of the Interior regulations state, my decision is the final administrative decision with respect to the June 26, 2014, denial that TPS issued regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in dark ink, appearing to read 'John A. Burns', with a long, sweeping horizontal stroke extending to the right.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO-IL
IRS